

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATE OF AMERICA,)
)
Petitioner,)
)
vs.) Civil No. 10-cv-00717-GPM-DGW
)
SCOTT McCOY,)
president of Lisa's Diner, Inc.,)
)
Respondent.)

UNITED STATES OF AMERICA'S PETITION TO
ENFORCE INTERNAL REVENUE SUMMONS

The petitioner, United States of America, by its attorneys, Stephen R. Wigginton, United States Attorney for the Southern District of Illinois, and Laura J. Jones, Assistant United States Attorney, alleges as follows:

1. This is an action to enforce an Internal Revenue Service (IRS) summons issued to respondent, Scott McCoy, who is president of Lisa's Diner, Inc.
2. This action is brought pursuant to the provisions of the Internal Revenue Code, 26 U.S.C. §§ 7402(b) and 7604(a), to judicially enforce an IRS summons.
3. Christopher White ("Revenue Officer White"), who issued the IRS summons, is a duly commissioned Revenue Officer, employed in the Small Business/Self-Employed Division of the IRS in Springfield, Illinois, and is authorized to issue an IRS summons pursuant to the authority contained in 26 U.S.C. § 7602 and Treasury Regulation § 301.7602-1, 26 C.F.R. § 301.7602(b)(1).
4. Revenue Officer White is conducting an investigation in an attempt to collect income tax liabilities of Lisa's Diner, Inc., as set forth in the declaration of Revenue Officer

White, attached as Exhibit A: Form 940 unemployment taxes for the calendar years ending December 31, 2008, and Form 941 payroll tax liabilities for the quarterly periods ending December 31, 2008, March 31, 2009, June 30, 2009, and September 30, 2009.

5. Respondent is in possession and control of testimony, books, records, papers, and other data that are relevant to the above-described investigation.

6. Revenue Officer White served respondent Scott McCoy, president of Lisa's Diner, Inc., on April 6, 2010, by personal service. The summons required that respondent appear at the IRS office located in Springfield, Illinois, on April 26, 2010, at 10:00 a.m. to provide documents and testimony relating to collection of the respondent's Form 940 unemployment taxes for the calendar years ending December 31, 2008, and Form 941 payroll tax liabilities for the quarterly periods ending December 31, 2008, March 31, 2009, June 30, 2009, and September 30, 2009 (the "summons"). *See Ex. A ¶ 4.* A copy of the summons is attached as Exhibit B. A copy of summons referral is attached as Exhibit C.

7. On April 26, 2010, the respondent did not appear at the IRS office in Springfield, Illinois, or otherwise comply with the summons. On June 14, 2010, the IRS Office of Chief Counsel sent respondent a "last chance" letter requesting respondent's appearance on July 12, 2010. That letter is attached as Exhibit D. Respondent did not appear pursuant to the "last chance" letter. Respondent's failure to comply with the summons continues to date, as set forth in the declaration of Revenue Officer White. *See Ex. A ¶ 5.*

8. The documents, records, and other data sought in the summons are not already in the possession of the IRS. *Ex. A ¶ 6.*

9. All administrative steps requested by the Internal Revenues Code for issuance of a summons have been taken. Ex. A ¶ 7.

10. The documents, records, and other data sought by the summons are relevant to the collection of the tax liability of respondent for the aforementioned tax years.

11. No Justice Department referral, as defined by 26 U.S.C. § 7602(d), is in effect with respect to respondent for the years under investigation.

12. It is necessary to obtain and examine the books, papers, records, or other data sought by the summons in order to collect the income tax liabilities as set forth above.

13. Pursuant to 26 U.S.C. § 7602, the IRS was entitled to issue an administrative summons on April 5, 2010, and the District Court may enforce an IRS summons if a taxpayer fails to appear and produce records that are relevant to a legitimate tax inquiry. *See* 26 U.S.C. § 7604.

WHEREFORE, the petitioner, United States of America, requests that:

A. The Court enter an order directing respondent Scott McCoy to show cause, if any, why he should not comply with and obey the summons and every requirement ordered;

B. The Court enforce the summons issued to Scott McCoy, requiring complete compliance with the summons and specifically directing the summoned party to obey the summons served upon him and ordering his attendance, testimony, and the production of the books, records, papers, and other data as required by the terms of the summons before Revenue Officer White or any other proper officer of the IRS at such time and place as may be directed by the Court;

C. The Court enter a final judgment and enforcement order;

- D. The Court award the United States costs of this proceeding; and
- E. The Court grant such other and further relief as it deems just and proper.

UNITED STATES OF AMERICA

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